

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

STATE OF TENNESSEE, *ex rel.*)
JONATHAN SKRMETTI, ATTORNEY)
GENERAL and REPORTER, and)
COMMONWEALTH OF KENTUCKY, *ex*)
rel. DANIEL CAMERON, ATTORNEY)
GENERAL,)
Plaintiffs,)
v.) 3:23-CV-00046-DCLC-JEM
IDEAL HORIZON BENEFITS, LLC d/b/a)
SOLAR TITAN USA, *et al.*,)
Defendants.)

DECLARATION OF TERRY W. SMITH

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, KNOXVILLE DIVISION:

Comes now **TERRY W. SMITH**, and pursuant to 28 U.S.C. § 1746, hereby certifies and declares as follows:

1. I am Vice President of First Horizon Bank, a Tennessee chartered bank ("First Horizon"), which is a secured creditor of Ideal Horizon Benefits, LLC ("Ideal"), one of the defendants in this Receivership Action. I am over twenty-one (21) years of age.

2. I am assigned to the Loan Rehabilitation and Recovery Department of First Horizon Bank. That department is also sometimes referred to as the Special Assets Department. The primary function of the Loan Rehabilitation and Recovery Department of First Horizon is to

recover the amounts due on troubled or problem loans. That process is sometimes referred to as a workout.

3. I am making this Declaration in conjunction with the Motion of First Tennessee for a determination that certain real property in Richmond, Kentucky, is not subject to the jurisdiction of the Receiver in this Action.

4. I am also making this Declaration in conjunction with the Motion of First Tennessee for concurrent and/or alternate relief from the injunction which the Court issued as to the assets of Sarah Kirkland and Richard Atnip (the "Asset Freeze.").

5. I am the officer in the Special Assets Department of First Horizon currently assigned to a defaulted loan in the amount of \$617,500.00 from First Horizon to Ideal (the "Subject Loan").

6. Ideal requested the Subject Loan so that it could fund the purchase of a building in Richmond Kentucky.

7. On October 27, 2024, First Horizon made the Subject Loan in the amount of \$617,500.00 to Ideal.

8. In conjunction with the Subject Loan, Ideal executed a promissory note dated October 27, 2022, in principal amount of \$617,500.00 from Ideal to First Horizon (the "Subject Note"). The maturity date of the Subject Loan was October 27, 2042, and the monthly payment was \$4,491.62. There was also a five year prepayment penalty. (A true and correct copy of the Subject Note is attached hereto as Exhibit A.)

9. In conjunction with the Subject Loan, New Horizon Ventures ("NHV"), which actually purchased the real property, executed a Mortgage dated October 27, 2022, as to the real property commonly known as 121 Industry Road, Richmond, KY 40475 (the "Subject Property"). The Mortgage was recorded on November 4, 2022, as Instrument No. 2014118450 in Book M2200 at page 134 in the records of the County Clerk of Madison County, Kentucky. (A true and correct of the Mortgage is attached hereto as Exhibit B.)

10. In conjunction with the Subject Loan, Richard M. Atnip executed a Commercial Guaranty dated October 27, 2022, as to any indebtedness of Ideal to First Horizon. (A true and correct of the Commercial Guaranty from Richard M. Atnip is attached hereto as Exhibit C.)

11. Ideal failed to make the payment due on the Subject Loan on January 27, 2023, and has not made any subsequent payments.

12. On or about February 7, 2023, First Horizon received a letter from the Office of the Attorney General of the State of Tennessee (the "Tennessee AG's Office") in which the Tennessee AG's Office advised of the entry of an "Asset Freeze Order" in this case as to the assets of Ideal, Sarah Kirkland and Richard Atnip (the "Enjoined Parties").

13. In April, 2023, the Court also entered an Amended Preliminary Injunction containing an "asset freeze" as to any assets of the Enjoined Parties and appointing Richard Ray as the Temporary Receiver for the assets of Ideal (the "Receiver").

14. The Receiver subsequently reached an agreement to sell the Subject Property as part of the liquidation of Ideal's assets. I worked with the Receiver as to the payoff of the Subject

Loan and the subsequent release of the Mortgage. I also worked with the Receiver as to a reduced price for the Subject Property due to an easement.

15. The Court approved that sale of the Subject Property for \$650,000.00 in an Order entered on July 7, 2023.

16. The sale of the Subject Property did not occur because the parties' discovery that Ideal did not own the Subject Property.

17. Instead, NHV owns the Subject Property on which is encumbered by the lien of the Mortgage that secures the repayment of the Subject Loan.

18. The potential purchaser, however, still wishes to purchase the Subject Property from NHV. First Horizon has now received a copy of an Offer to purchase the Subject Property for \$650,000.00. (A true and correct of the Offer is attached hereto as Exhibit D.)

19. First Horizon is in favor of the sale of the Subject Property.

20. If the Court approves the sale of the Subject Property and allows Richard Atnip as managing member of NHV to execute the documents related to the sale of the Subject Property, First Horizon will agree to the following division of the sale price of \$650,000.00 (the "Sale Proceeds"):

- The normal and usual closing costs will be paid from the Sale Proceeds;
- The real estate broker will receive a commission of six (6%) percent - \$39,000.00 - from the Sale Proceeds;
- The outstanding real estate taxes (prorated for the current year) will be paid from the Sale Proceeds; and

- First Horizon will accept the remaining net Sale Proceeds in satisfaction of all amounts owed on the Subject Loan including any claims against the Estate or Richard Atnip as guarantor.

21. As of March 26, 2023, the balance due on the Subject Loan is \$679,245.89 (principal of \$610,183.11, accrued interest of \$47,060.78, late fees of \$3,368.70 and prepayment penalty of \$18,633.30). Interest continues to accrue on the outstanding principal balance at the daily rate of \$103.39. Additionally, First Horizon has incurred legal fees, appraisal fees and the cost of a title search that are not listed above.

22. The portion of the Sale Proceeds which First Horizon receives will not pay all of the outstanding Principal owed on the Subject Loan.

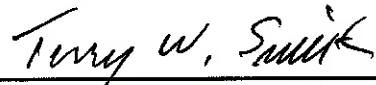
23. First Horizon is advised that NHV is willing to sell the Subject Property on the proposed terms if the Court determines that the Subject Property is not property of the Estate and/or releases the asset freeze so that the sale can proceed.

24. The Receiver has already ceased paying the utilities as to the Subject Property which will result in its deterioration over time.

25. First Horizon believes that this offer is the best that will be made for the Subject Property.

26. As a result, First Horizon is willing to release its entire claim against the Estate to facilitate the sale.

I CERTIFY, PURSUANT TO 28 U.S.C. § 1746, UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.


TERRY W. SMITH

Dated: March 28, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 29th of March, 2024, a copy of the foregoing electronically filed document was served upon all counsel of record via the Court's notice of electronic filing, including:

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